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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/894,065	06/28/2001	David Michael Kocilc	AUS920010293US1	5452
7590	04/08/2005			EXAMINER
Duke W. Yee, Carstens, Yee & Cahoon, LLP P.O. Box 802334 Dallas, TX 75380			FLEMING, FRITZ M	
			ART UNIT	PAPER NUMBER
			2182	
DATE MAILED: 04/08/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/894,065	KOELLE ET AL.	
	Examiner	Art Unit	
	Fritz M Fleming	2182	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-27 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 04 September 2001 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


 FRITZ M. FLEMING
 PRIMARY EXAMINER
 GROUP 2100

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Drawings

1. The drawings are objected to because the arrows on Figure 5, S1,S11,S7 should be reversed in order to match the description of the specification. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-8,14-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Dowling.

In Dowling, the messages are sent from the candidates via discovery packets to the commander switch. A group is to be created from the candidate switches, based upon the discovery of the candidate switches described at columns 13 and 14, noting especially that CDP packets are sent directly to the commander switch. Thus the candidate switches send attributes information to the commander switch via the CDP packets, wherein per column 10, CDP is used to automatically identify candidate network devices and allows a network administrator to view information about the device. Column 13, lines 54-65 set forth the criteria for a switch to be a candidate, which includes at a minimum information about an operating system (i.e. criteria (2) having HTTP capabilities and CDP enabled) which is further defined at column 9, lines 30-41, by specifying particular operating systems that are supported. The requestor is the person operating the management station 104 which ultimately selects the group based upon the attributes of the candidate criteria, and such is done dynamically as the commander switch presents the candidate switches to the requestor, who then has the group returned when the group is ultimately selected. Thus groups are created out of candidate switches which send out CDP packets to a commander switch which is under

the control of the management station which ultimately performs the final grouping based upon the candidate criteria. Figure 11 shows a sample monitoring and configuration display. Per claim 1, the overall system is a data processing system as data is processed via the grouped switches. Per claim 2, the groups are at an application group or user group or a data processing group, as the clustered switches are part of a network that performs all three functions, thus the clustered switches are grouped according to the same functionality, as computers attached to the switches are also included in the grouping. Per group 3, the set of attributes includes at least the operating system information, as the CDP must be enabled. Per claim 4, the group of switches is identified as a group of data processing systems, as the switches process data to the extent claimed. Per claim 5, a software install option is seen at Figure 11 and the "Upgrade The Cluster Software" option. Per claim 6, the requestor is a user that uses a software process in the station 104 to perform the actual grouping. Per claim 7, the group can be created from scratch, as the commander switch is configured by the user (bottom of column 13) and then the commander switch discovers the candidate switches. Per claim 8, the meta data is seen as the various tables which describe the data about the candidate switches themselves. Claims 14-20 are "means+function" equivalents of claims 1-6, wherein the means responsible for the functions of the method steps have been identified, namely the sending means being the CDP packets generated and sent from the candidate switches, the receiving means at the management station with the commander switch serving as the dynamically generating and returning means. Claims 21-27 are anticipated in that the overall

system of candidate switches, commander switch and management station are computer based and thus require the claimed first-third instructions in order for the commander switch to discover candidate switches that meet the criteria for grouping under the ultimate approval of the user via the management station.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dowling in view of Thompson et al.

Dowling sets forth the use of a management station, but provides no details as to what it comprises.

Thompson et al. show in Figure 1 a network management station 100 that comprises a general purpose computer containing discovery software 101 in the memory, any suitable processor 102, a bus or busses 104, a network interface 112 and the network 118, wherein the network interface is either a modem or an ETHERNET based NIC, as these are the types on interfaces conventionally used to interface to the types of networks mentioned in columns 1 and 2. Although only one processor is shown, general purpose computers are well known to have plural processors.

Therefore it would have been obvious to one having ordinary skill in the art at the time that the invention was made to modify Dowling per the teachings of Thompson et al., as Dowling requires a management station and Thompson et al. provides just such a management station in the from of a general purpose computer capable of performing the functions required. Claim 9 requires that the processing unit executes the instructions, which is met by the combined teachings in that the management station of Dowling sets up the commander switch and then user is shown the current candidates for inclusion in the cluster, thus requiring the details of Thompson et al. to carry out the instructions to set up the commander switch to discover the candidate switches (see for

example column 14), receive a request to form the group (column 14), dynamically form the group (column 14) and ultimately return the group to the requestor for displaying existing and candidate switches (column 14). Per claims 10 and 11, Thompson et al. disclose a single or multiple busses, thereby teaching a primary and secondary bus in the case of plural busses. Per claim 12, a single processor is shown in Thompson et al. at 102, while general purpose computers with plural processors are notoriously well known. Hence claim 12 is deemed to be obvious subject matter. As far as claim 13 is concerned, Thompson et al. shows a network interface 112 and Dowling teaches an ETHERNET LAN, thus rendering the claim obvious.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fritz M Fleming whose telephone number is 571-272-4145. The examiner can normally be reached on M-F, 0600-1500.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Gaffin can be reached on 571-272-4146. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2182

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Fritz M. Fleming
Primary Examiner
Art Unit 2182

fmf